



GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT

New Zealand



Downloaded: 07 May 2025

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit www.dlapiper.com or contact:

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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NEW ZEALAND



Last modified 21 June 2024

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The official currency is the New Zealand dollar (NZD). The official language is English.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company employing staff in New Zealand is required to register with the Inland Revenue Department (IRD) as an employer and set up an IRD number, with a limited range of exceptions.

Employment income is subject to tax at source in that the employer must withhold the tax and return this to the IRD under the pay-as-you-earn (PAYE) regime.

PRE-HIRE CHECKS

Required: Immigration compliance. Background checks may also be required in some industries, eg, childcare.

Permissible: Criminal and credit reference checks are generally permissible for roles involving significant financial risk but are subject to the candidate's consent. Reference checks are common and are permissible with the candidate's consent.

Immigration compliance

Nationals (and permanent residents) of New Zealand and Australia have the right to work in New Zealand; however, all other immigrants have to apply for the following visas:

- 'Work to Residence' facilitates the entry of people whose skills are in demand and provides them with a pathway to residence.
- 'Essential skills' facilitates the entry of people required on a temporary basis to fill shortages where New Zealand citizens or residence class visa holders are not available for the work offered.

- 'Specific purpose or event' facilitates the entry of people who have demonstrated skills, expertise or attributes that are likely to benefit New Zealand, where there is no risk of negative impact on opportunities for New Zealand citizens or residence class visa holders.
- 'Students and trainees' facilitates the entry of students and trainees to gain practical work experience or to train as part of their studies.

There are a small number of other special category Visas for specific industries (e.g. horticulture and viticulture, fishing, and religious workers), as well as a family category and humanitarian category of Visa.

IMMIGRATION

Nationals and permanent residents of New Zealand and Australia have the right to work in New Zealand; however, all other immigrants have to apply for 1 of the following visas:

- Essential Skills work visas
- Skilled Migrant Category Work to Residence visas
- Residence from Work/Investor/Entrepreneur (various categories)

HIRING OPTIONS

Employee

Individuals may be recruited on either a full-time, part-time or casual basis (meaning they are employed by the hour or day) or on a fixed-term contract for a limited period. Various criteria must be met for valid casual or fixed-term employment.

Independent contractor

Independent contractors may be engaged directly by the company or via a personal services company.

Agency worker

Temporary workers are used by some organizations for short periods. The most common forms of temporary labor in New Zealand include casual employees and fixed-term employees. Agency workers are engaged by the agency, not the employer for which they are placed to work. The work arrangement between an agency, the agency worker and an organization is commonly referred to as triangular employment. The organization, despite not employing the agency worker directly, may still be liable in employment disputes due to being a controlling 3rd party.

Employers may engage casual employees on an as-needed basis. While casual employment relationships are not governed by legislation, employers must be cautious that the employee does not “drift” into permanent employment status.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

An employment agreement must be in writing and must contain certain minimum terms such as the names of the parties, a description of the work to be performed, the agreed hours that the employee will work, the wage rate or salary payable and how it will be paid, how employment relationship problems will be resolved, that personal grievances must be raised within the relevant notification periods (being 12 months if the grievance is in respect of sexual harassment and 90 days for all other grievances), an employment protection provision, a statement that the employee will get (at least) time-and-a-half payment for working on a public holiday (and, in some cases, a day in lieu), and any other matters agreed on, such as trial periods, probationary arrangements, availability provisions, or the nature of the employment if the employment is fixed-term, among others. An employment agreement must also refer employees to the Ministry of Business, Innovation, and Employment for further information regarding their entitlements under the Holidays Act 2003.

Trial and Probationary periods

A trial period is permissible for a period of 90 days at the start of a new employee's employment. Employees whose employment is terminated during a valid trial period are unable to raise a personal grievance with respect to their dismissal. However, an employee is still able to raise a personal grievance in respect of any other employment matters, for example, disadvantage during employment or harassment.

Alternatively, employers may include a probationary period in their employment agreements. However, during a probationary period, the employer must still undertake a fair process before dismissing an employee and an employee may still raise a personal grievance with respect to their dismissal.

Policies

Not mandatory, but some policies – especially regarding anti-discrimination and harassment, bullying and health and safety – are highly recommended as the absence of these policies is relevant in the event of a dispute.

Third-party approval

No requirement to lodge employment contracts or policies with or get approval from a 3rd party.

LANGUAGE REQUIREMENTS

No statutory requirements, but all documents should be in English.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All employees are entitled to minimum employment rights under the Employment Relations Act 2000, Holidays Act 2003, Parental Leave and Employment Protection Act 1987, Minimum Wage Act 1983, Wages Protection Act 1983 and Equal Pay Act 1972.

Working hours

Standard working hours are 40 hours per week, although employers may require an employee to work reasonable additional hours.

Overtime

Overtime payment may be provided for in individual or collective employment agreements but is not required. If no overtime is payable for a salaried employee, the employment agreement should explicitly state that remuneration covers both payment for any additional hours and the employee's availability to work those additional hours.

Wages

The national adult minimum wage rate for employees aged 16 years or older is NZD22.70 per hour before tax.

Vacation

4 weeks paid annual leave per year after 12 months of continuous employment.

Sick leave and pay

As of July 24, 2021, employees are entitled to 10 days' sick leave per year after 6 months of continuous employment. Employees may carry over accrued sick leave up to a total of 20 days.

Family violence leave

Employees are entitled to up to 10 paid days off a year due to family violence. The employee can also ask for flexible work arrangements for up to 2 months.

Bereavement leave

After 6 months of continuous employment, an employee is entitled to 3 days of bereavement leave where a member of their immediate family dies, they have a miscarriage or stillbirth, or another person has a miscarriage or stillbirth, and they are either the partner (former or current) of that person or had agreed to be the primary carer or partner of the primary carer of the baby. An employee receives 1 day of bereavement leave if another person dies and the employer accepts the employee has suffered a bereavement.

Parental leave and pay

Eligible primary carers are entitled to:

- 26 weeks of paid parental leave. This leave is paid for employees and self-employed individuals. Payment is made by the government, not by employers.
- 52 weeks of extended leave (unpaid) in total (includes paid parental leave) 10 days of special leave (unpaid).
- 2 weeks of partners' leave (unpaid)

Other leave/time off work

Employees are legally required to attend jury service when called, and their job is protected while they attend. Employers are not required to pay employees on jury service leave. If an employee's absence causes significant difficulty for an employer, an employer may support an application to have an employee excused or their jury service deferred.

DISCRIMINATION & HARASSMENT

Employees are protected from discrimination and harassment under both the Employment Relations Act 2000 and the Human Rights Act 1993. Protected characteristics are age (from 16 years), color, disability, employment status, family status, marital status, political opinion, race, ethnic or national origins, religious or ethical belief, sex, sexual orientation and union involvement. An employer also cannot discriminate against an employee on the basis that the employee is, or is believed to be, an individual who has experienced domestic violence.

WHISTLEBLOWING

The Protected Disclosures (Protection of Whistleblowers) Act 2022 allows employees to make protected disclosures regarding suspected serious wrongdoing within their organization. Disclosures can be made within an organization or to an appropriate authority. Disclosers are entitled to confidentiality, non-retaliation and no less favorable treatment, and immunity from civil, criminal, and disciplinary proceedings. These protections apply even if the discloser is mistaken and there is no serious wrongdoing. An organization must respond to a protected disclosure being made within 20 working days or advise the discloser of the timeline if the 20-day period is unfeasible.

BENEFITS & PENSIONS

New Zealand has an optional superannuation saving scheme called KiwiSaver. Employers may provide a private superannuation scheme if they wish to.

New Zealanders qualify for a government pension payment at age 65.

DATA PRIVACY

The Privacy Act 2020 controls New Zealand data privacy and determines how employers collect, use, disclose, store and give access to "personal information."

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

New Zealand law does not contain any automatic transfer provisions except for a few limited classes of employees.

If a business is sold, transfer of employees depends on the nature of the sale.

Where a business, or part of the business, is acquired by way of an asset and goodwill purchase, the employees do not automatically transfer to the new owner but must agree to do so. Where a business, or part of the business, is acquired by way of a share purchase, the employment of employees remains unchanged.

Special provisions apply for businesses that employ "vulnerable employees."

There are also requirements under the Employment Relations Act 2000 for there to be a process for consultation with staff in business transfer situations. These are called "Employment Protection Provisions" and are process requirements only, meaning there is no substantive right to transfer.

EMPLOYEE REPRESENTATION

In New Zealand, an employee may choose whether or not to be part of a union. Any union validly appointed to represent an employee or employees must be recognized and dealt with according to the law. Where there is a collective agreement that covers an employee's role, an employer must provide new employees an Active Choice Form, prescribed by the Ministry of Business, Innovation and Employment, which seeks information about whether the employee intends to join a union.

TERMINATION

Grounds

Termination may be brought about by mutual agreement, expiry of a fixed-term contract, termination by the employer for cause (with or without notice) or termination (ie, resignation) by the employee.

Who is subject to termination laws?

All employees.

Restricted or prohibited terminations

Employers are prohibited from making "unjustified" dismissals and from taking adverse action against an employee for union membership or because of a protected characteristic under the Human Rights Act 1993.

Third-party approval for termination/termination documents

Not applicable for this jurisdiction.

Mass layoff rules

Employers must use a fair and reasonable process when implementing a redundancy, regardless of how many roles are impacted. An employer must show that there is a genuine commercial reason for any redundancy decision and offer to redeploy employees if possible.

Notice

The notice period will be set out in the employment agreement. This is often 1 month.

Statutory right to pay in lieu of notice or garden leave

Employers may pay in lieu of notice if stipulated in the employment agreement or agreed to by the employee. No right to impose garden leave unless specified in the employment agreement.

Severance

No right to severance payments unless specified in the employment agreement.

POST-TERMINATION RESTRAINTS

Restraints in New Zealand are enforceable only if the restriction is no more than is reasonably necessary to protect the legitimate proprietary interests of the employer.

Non-competes

Permissible. Generally, non-competes are unenforceable for junior employees, but they may be enacted for up to 12 months for the most senior executive employees.

Customer non-solicits

Permissible (subject to reasonableness).

Employee non-solicits

Permissible (subject to reasonableness).

WAIVERS

Statutory rights cannot be waived; however, some contractual or common law rights may be waived by the employee.

REMEDIES

Discrimination

If employees believe they have been subjected to discrimination, they may apply for a remedy under either the Employment Relations Act 2000 or the Human Rights Act 1993. Potential sanctions include compensation, declarations, orders and recommendations.

Unfair dismissal

If the Employment Relations Authority determines an employee has been unjustifiably (unfairly) dismissed, the employee may be awarded lost remuneration, compensation and/or reinstatement. If requested by the employee, reinstatement will be the first course of action considered by the Employment Relations Authority.

Failure to inform and consult

An employer who does not consult with an employee in circumstances where the employer's decision may "adversely affect" the employee's employment may be liable to an unjustified dismissal or disadvantage claim in the Employment Relations Authority.

CRIMINAL SANCTIONS

Generally, none. However, there are criminal sanctions for breach of relevant health and safety laws.

KEY CONTACTS



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